

DEPARTMENT OF STATE REVENUE

29970563.LOF

LETTER OF FINDINGS NUMBER: 97-0563 CG Denial Of Application For Indiana Charity Gaming License For The Period: 1992 Through 1997

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Charity Gaming - Qualified Organization

Authority: IC 4-32-6-20(1)(C); IC 432-6-5; IC 23-17-10-1; IC 23-17-23-3; IC 23-17-27-1; IC 23-17-27-8; 45 IAC 18-2-1

The taxpayer protests the Department's denial of its application for an Indiana Charity Gaming License.

STATEMENT OF FACTS

The taxpayer is a bona fide civic organization whose purpose is to provide low cost housing for homeless families living in shelters. The taxpayer seeks to enhance the quality of life of families and individuals by providing safe, adequate, affordable, and stable housing in a safe and stable environment. Their goals also strive to empower individuals to become self-sufficient and independent through education and supportive service counseling. The taxpayer was incorporated under the laws of the State of Indiana on January 5, 1993. The taxpayer was administratively dissolved by the Indiana Secretary of State, and was reinstated on September 22, 1997. The taxpayer filed an Indiana Charity Gaming Qualification Application (CG-1) on October 8, 1997. The Compliance Division of the Indiana Department of Revenue reviewed the taxpayer's application to become licensed for Indiana Charity Gaming Operations, and determined that the taxpayer's organization had not been in continual existence for five years. On October 14, 1997, the taxpayer's application was denied. The taxpayer received the Department's denial on October 15, 1997, and filed a protest with the Department on October 20, 1997. A hearing was held on January 13, 1998. The Department received a transcript of the hearing from Accurate Reporting of Indiana on February 10, 1998.

Additional information will be provided as necessary.

I. Charity Gaming - Qualified Organization

DISCUSSION

The taxpayer protests the Department's denial of its application for an Indiana Charity Gaming License based upon the Department's determination that the taxpayer has not been in continuous existence for at least five years pursuant to IC 4-32-6-20(1)(c). The taxpayer contends that it has been in existence for at least five years. The taxpayer filed a CG-1 (Indiana Charity Gaming Qualification Application), and attached the following documents in support of its claim that the organization had been in continuous existence for five years:

- F, Inc. business meeting minutes dated July 9, 1992.
- F, Inc. business meeting minutes dated August 20, 1992.
- F, Inc. treasurer's report for the month of October dated November 10, 1992.
- F, Inc. checking account summary for the period 01/29/93 through 02/26/93.
- F, Inc. checking account summary for the period 02/26/93 through 03/31/93.
- F, Inc. checking account summary for the period 07/30/93 through 08/31/93.
- F, Inc. minutes of regular meeting dated February 23, 1993.
- Agenda of a meeting dated March 10, 1993.
- F, Inc. minutes of a meeting on May 28, 1997.
- F, Inc. minutes of a meeting on August 12, 1997.

The Department originally determined that this documentation was not sufficient to support the taxpayer's position that it had been in existence for at least five years. At hearing, the taxpayer was unable to provide the Department with any other documentation in furtherance of its protest.

The taxpayer was incorporated on January 5, 1993 under the laws of the State of Indiana. The taxpayer was administratively dissolved by the Indiana Secretary of State for failure to file annual reports. The taxpayer filed an application and was reinstated on September 22, 1997. Under IC 23-17-23-3 a corporation administratively dissolved under section 2 may apply for reinstatement. Pursuant to subsection c, when the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred. The taxpayer's IT-35ARs

(Not-For-Profit Organization's Annual Gross Income Tax Exemption Report) filed on July 18, 1997 for the years 1993 through 1996 show the total gross receipts and total assets to be \$415/\$0; \$0/\$0; \$0/\$0; \$0/\$0 respectively. Pursuant to IC 4-32-6-20 a qualified organization means a bona fide religious, educational, senior citizen, veterans, or civic organization operating in Indiana that:

(A) operates without profit to the organization's members;

(B) is exempt from:

(I) taxation under Section 501 of the Internal Revenue Code...

and...

has been **continuously in existence for at least five (5) years** or is affiliated with an Indiana parent organization that has been in existence for at least five (5) years...

Emphasis added.

Indiana Code section 4-32-6-5 defines a bona fide civic organization as a, "...organization that is not for pecuniary profit...whose written constitution, charter, articles of incorporation, or bylaws provide the following: (1) That the organization is organized primarily for civic, fraternal, or charitable purposes. (2) That upon dissolution of the organization all remaining assets of the organization revert to nonprofit civic or charitable purposes. The taxpayer's Amended Articles of Incorporation filed on October 12, 1993 follow the guidelines in IC 4-32-6-5 (1) and (2). Additionally IC 4-32-6-20 states that the organization must be "operating." The Department gives this word its ordinary and plain meaning. Operating is defined by Webster's Dictionary as, "adj.: of, relating to, or used for or in operations." The word "operate" means, "1: to bring about: EFFECT 2 a: to cause to function: WORK b: to put or keep in operation..." Webster's New Collegiate Dictionary (1979). It is clear from the taxpayer's testimony during the hearing that they did nothing in furtherance of their corporate charter than to talk about what they wished to accomplish. With no funding or savings, the corporation was dormant for the years 1994, 1995, and 1996. Only upon being contacted by an individual (Mr. B) concerning how to raise money through charitable gaming did the taxpayer resurrect the corporation, file all necessary forms with the State of Indiana, the Federal Government, and fill out a charitable gaming application. It is clear that the taxpayer was not operating in any sense of the word. Finally, the Department must determine whether or not the organization has been in continuous existence for at least five years. 45 IAC 18-2-1 states:

(a) To obtain a license to operate an allowable event, a qualified organization must submit a written application on a form prescribed by the department.

(b) The application shall include the following information:

* * *

(6) Sufficient facts for the department to determine that the organization is a qualified organization, including, but not limited to, the following:

(C) Proof that the organization has been in existence for five (5) or more years.

Emphasis added.

The Department's Form CG-1, which is the Indiana Charity Gaming Qualification Application, asks on line 7c, how many years has the organization been in active, continuous existence? The form goes on to state that verification must be attached to the application and that additional information and instructions are on page three. According to page three of the Department's CG-1 the relevant facts in determining continuous existence could include a combination of the following items:

Indiana Forms IT-35 AR and IT-20NP;

Federal Form 990 and/or 990T if applicable;

minutes of meetings;

bank statements;

dated newspaper articles;

any type of dated state or local licensing permits, such as alcoholic beverage licenses and registration with the Secretary of State's office;

account payables, including copies of dated invoices;

account receivables, including copies of dated invoices;

utility bills;

dated leases;

canceled checks (representing each of the five years);

bylaws that are dated;

dated articles of incorporation;

affidavits or letters of confirmation from the national or parent organization on organization letterhead;

and

descriptions and results of fund-raising activities for the last five years.

Although a corporation may stop doing business, it is still necessary to meet all statutory requirements, such as annual reports, etc., until it is voluntarily dissolved. Indiana Code section 23-17-10-1 states in pertinent part, "A corporation with members must hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws." The taxpayer's bylaws state in Article III Section 6: "The Board of Directors shall hold an annual meeting within six (6) months after the close of each fiscal year of the corporation...". The taxpayer provided minutes of meetings held on July 9, 1992; August 20, 1992; February 23, 1992; March 10, 1993; May 28, 1997 and August 12, 1997. The taxpayer cannot provide evidence of an annual meeting for the years 1994, 1995, and 1996. The taxpayer failed to comply with the requirements of IC 23-17-10-1.

Indiana Code section 23-17-27-8 states in pertinent part, "An annual report...must be filed with the secretary of state... during the same month as the month in which the corporation was incorporated...". The taxpayer was incorporated on January 5, 1993. The taxpayer filed its 1994 annual report on February 7, 1994. The annual reports for the years 1995, 1996, and 1997 were filed on one form and filed September 22, 1997 along with its application for reinstatement. The taxpayer clearly failed to follow the requirements of IC 23-17-27-8.

Indiana Code section 23-17-27-1 states in pertinent part, "A corporation shall keep as permanent records a record of the following: (1) Minutes of meeting's of the corporation's members and board of directors... (b) A corporation shall maintain appropriate accounting records...". The taxpayer stated that it did not have a list of members and that they did not have the membership available to run the charity gaming events. Additionally, the taxpayer had no financial records other than checking account statements with little or no funds available.

By strict interpretation of the language contained in IC 23-17-23-3, the not-for-profit corporate shell of the taxpayer was in existence from its inception on January 5, 1993 to the present. However, the taxpayer's Indiana Charity Gaming Qualification Application was not filed until October 8, 1997. The taxpayer's corporation was in existence at the time of the application only one (1) year, nine (9) months and three (3) days. The taxpayer's organization was not in existence for five (5) years as is required by IC 4-32-6-20. Additionally, during the period from March 10, 1993 to the corporation's reinstatement (September 22, 1997) the taxpayer did nothing in furtherance of its corporate charter and did not carry on any business until it was contacted by Mr. B who encouraged the taxpayer to remedy all the past deficiencies in order to tender a charity gaming qualification application. During this period the taxpayer was not operating as is required under IC 4-32-6-20.

FINDING

The taxpayer's protest is denied.